

CALIFORNIA LITIGATION:

Editor's Foreword, Volume 10, Number 3, Spring 1997

Beyond 2000

By Russell Leibson

This is a special year for California Litigation. As we celebrate the tenth anniversary of our Journal, the Editorial Board decided to devote the three issues in this volume year to "past," "present," and "future" perspectives on litigation practice. In our last issue, we presented articles bringing a current perspective on litigation practice in our state, featuring new articles authored by former Litigation Section Chairs and past editors of *California Litigation*.

-- Future Perspectives --

This issue is devoted to articles bringing a future perspective on litigation practice in our state. Where are we headed as a profession and what trends do we see developing in the substantive law affecting litigation practice? Answers to these questions are of paramount importance to all litigators.

Robert L. Haig's article advocates support for the creation of specialized business courts for trial of complex business cases to bring California in line with an emerging trend nationwide. Among the many benefits he touts, based on his experience with the New York model, are speedier, less-costly and more efficient dispute resolution and improving the administration of justice by easing the pressure on trial courts overburdened with criminal case backlogs.

David S. Rand's article surveys recent trends in challenges to mandatory arbitration provisions in a wide variety of contractual settings. As such provisions become more and more prevalent over the coming decade, the potential for abuse, especially in consumer contracts, requires judicial oversight and, sometimes, intervention to level the playing field.

Andra Barmash Greene and Kyhm Penfil lament the decline in professionalism and civility among lawyers, especially misconduct at depositions, and offer some concrete suggestions for bringing California in line with recent efforts at the federal level to curb such abuses.

Nicole A. Dillingham's article forecasts the increasing "privatization" of justice through alternative dispute resolution. She recommends more funding for the public courts and development of procedures to make them more efficient and competitive with the private dispute resolution providers, and continued development of procedural and substantive safeguards in the private justice arena to insure that the interests of litigants and the public are protected.

The Honorable William F. Rylaarsdam looks at recent case law on the evolving assumption of risk defense in tort actions. As the courts struggle to define the scope of assumption of the risk, the fabric of the defense will continue to be stretched and twisted by cases presenting unusual facts, and may lead to holdings difficult to square with precedent.

Ronald H. Abernethy, David Wellenbrock and The Honorable George J. Abdallah, Jr., offer a defense attorney's, a prosecutor's and a trial judge's perspective on the "Three Strikes" laws that have generated so much controversy in California. As Judge Abdallah points out, although "Three Strikes" cases have had a disproportionate impact on trial court resources, effective monitoring and assessment by both bench and bar can minimize their impact on the administration of the courts.

The Honorable Jeffrey T. Miller's Judicial Opinion article offers valuable practice tips for enhancing the

professionalism of trial lawyers in the eyes of those who arguably matter most -- the jury. Among his many compelling observations, distilled from his numerous years of experience as a trial lawyer and judge, is one that cannot be emphasized enough -- civility and professionalism in the courtroom are not hollow rhetoric -- but rather the cornerstone of successful advocacy.

-- Looking Ahead --

Our next issue looks at "Cyberlaw," examining jurisdiction, privilege and evidentiary issues surrounding the Internet and the role of technology in trial practice. From the "high-tech courtroom warrior" to the "technologically-challenged," this issue will give you valuable practical tools to litigate effectively in this exciting new arena.

Russell Leibson, Editor-in-Chief of California Litigation, practices at his own firm in San Francisco.

California Litigation is pleased to review original articles submitted for publication.
(Articles should be 8-10 double-spaced pages, or about 2,000 words.)

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